Compensation and benefits tax provisions in "One Big Beautiful Bill Act"

KPMG analysis and observations

This report reflects the legislation signed into law by the president on July 4, 2025 (Pub. L. No. 119-21) and was last updated July 28, 2025.

Contents

Introduction

The House of Representatives on May 22, 2025, passed H.R. 1 (House bill), the budget reconciliation bill known as the "One Big Beautiful Bill Act" (OBBBA) (read *TaxNewsFlash*). On July 1, 2025, the Senate passed its version of H.R. 1 (Senate bill), which made various amendments to the bill, including changes to the tax subtitle that was included in the House bill (read *TaxNewsFlash*). On July 3, 2025, the House passed the Senate bill without amendment, and the bill was signed into law by President Trump on July 4, 2025 (Pub. L. No. 119-21).[1]

This analysis of the legislation generally describes current law (meaning the law prior to enactment of the legislation), the House bill, and the amended Senate bill ultimately passed by the House and signed by the president.

Both the House and Senate bills would generally make permanent the tax provisions of the TCJA. Both bills also would temporarily provide for tax benefits promised by the president for tip income, overtime pay, and auto loan interest, and introduce a host of revenue-raising provisions. However, the enacted Senate bill differs from the House bill in several ways, as described below.

Among the important business provisions of the enacted Senate bill are provisions that:

- Reinstate and make permanent expensing of R&D costs, the higher EBITDA cap on the deduction for interest, and 100% bonus depreciation (the House bill would only extend these provisions for five years)
- Make permanent the section 199A deduction for passthrough business income (at the current 20% rate instead of the higher 23% rate of the House bill)
- Renew and reform the Opportunity Zone program
- Add a 100% first-year depreciation deduction for real property used in a production activity (the House bill included a similar proposal)

Note that the House bill included a proposed retaliatory tax on certain foreign corporations under new section 899 that was removed in the enacted Senate bill following the announcement of an agreement with the other G7 countries regarding the tax (read *TaxNewsFlash*).

The enacted Senate bill also includes revenue-raising provisions that:

- Repeal or phase out energy tax credits created by the Inflation Reduction Act (IRA) (though in some cases extending the credits further than the House bill)
- Make extensive reforms to the U.S. international tax regime, including to foreign-derived deduction eligible income (FDDEI), global intangible low-taxed income (GILT), and the base erosion anti-abuse tax (BEAT), and permanently extend the CFC look-through rule of 954(c)(6)

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[1] The Joint Committee on Taxation (JCT) has provided a number of documents estimating the revenue effects of the various versions of the bill:

- JCX-26-25R, which estimates the revenue effects of the provisions of the bill as passed by the House on May 22, 2025
- JCX-35-25, which estimates the Senate-approved bill using a present law baseline (the same baseline used for the estimates for the House bill provided above) that assumes that tax provisions of current law expire according to their terms
- JCX-34-25, which estimates the Senate-approved bill using a "current policy baseline" as adopted by the Senate, which assumes that tax policies currently in effect (such as the lower Tax Cuts and Jobs Act (TCJA) individual tax rates) are permanent and therefore extending those provisions has no revenue effect

- Temporarily increase the $10,000 cap on the state and local tax (SALT) deduction to $40,000, with no significant changes to the treatment of passthrough entity taxes
- Impose a 1% tax on remittances to a recipient outside the United States (would have been 3.5% under the House bill)
- Increase taxes on college endowments (but at lower rates than those of the House bill and omitting a provision on private foundations)
- Bar the IRS from making payment on certain employee retention credit claims filed after January 31, 2024

This report includes initial analysis and observations regarding the provisions in the bill related to compensation and benefits. This is one of a series of reports that KPMG has prepared on the bill, which can all be found **here**.

No tax on tips

Currently, tips are includible in an individual's gross income and subject to federal income and employment taxes.

The employer is responsible for reporting and withholding on employee tips. There is tax reporting for payments to vendors and independent contractors on Form 1099-NEC or Form 1099-K. In addition, a business that pays at least $600 to an individual for services performed by the individual in their trade or business is required to provide a Form 1099-NEC. Payment settlements entities (such as PayPal and Square) are required to report certain payments on Form 1099-K.

House bill (sec. 110101)

The House bill provision would provide individuals with an income tax deduction equal to the qualified tips received during the year and reported on Form W-2, Form 1099-K or Form 1099-NEC, or reported by the taxpayer on Form 4317.

Under the provision, qualified tips would include any cash tip received in a job that traditionally and customarily receives tips as of December 31, 2024. Treasury would provide a list of qualifying occupations. Qualified tips would not include an amount received unless:

- The amount is paid voluntarily without consequence of nonpayment, is not subject to negotiation, and is determined by the payor,
- The trade or business in which the individual receives the amount is not a specified service trade or business, and
- The individual did not receive earned income in excess of the 414(q) amount for highly compensated employees.

Tip deductions would only be allowed if the qualified tips were reported on the employee's Form W-2 and independent contractors would only be eligible if there were a separate accounting of qualified tips.

Withholding tables and procedures would need to be updated to take into account the tip deduction.

The provision would apply to tax years 2025 through 2028.

Senate bill enacted as OBBBA (sec. 70201)

The Senate bill provision as enacted is similar to the House bill. However, the Senate bill provides the deduction cannot exceed $25,000 and starts to phase out when the taxpayer's modified adjusted gross income exceeds $150,000 ($300,000 for joint filers). The Senate bill applies to tax years 2025-2028.

KPMG observation

Under the Senate bill, employers need to separately report the qualified tips on the Form W-2 and apply any adjustments to withholding. However, reporting on Form W-2 would not otherwise be changed. The provisions exclude the tips from income by allowing an employee deduction, which lessens the employer burden. Similarly, reporting with respect to payments to non-employees on Forms 1099-NEC or Form 1099-K need to include separate reporting of any amounts properly designated as tips and whether such amounts were received in an occupation that traditionally and customarily received tips. However, such reporting (including threshold amounts) is not otherwise changed.

Extension of tip credit to beauty service business

Restaurants and other food and beverage establishments can elect to claim a tax credit on amounts equal to the employer share of FICA taxes paid on tips that are in excess of those tips treated as wages to meet the minimum wage requirements of the Fair Labor Standards Act (FLSA). The credit is applicable to tips received from providing, delivering, or serving food and beverages if tipping is customary. Employer deductions are not allowed for amounts used to determine the credit.

House bill (sec. 110101)

The House bill provision is identical to the Senate bill as enacted.

Senate bill enacted as OBBBA (sec. 70201)

The Senate bill as enacted extends the employer FICA tip credit to tips received from customers or clients in connection with certain beauty services for which tips are customarily provided, including barbering, hair care, nail care, esthetics, as well as body and spa treatments. For purposes of the allowable employer credit calculation, the minimum wage limitation is revised for beauty services to reference the applicable rate under the FLSA for that month (rather than the rate in effect as of January 1, 2007, applicable to food or beverage establishments). This provision in the Senate bill includes certain reporting requirements.

The provision applies for tax years beginning after 2024.

No tax on overtime

Currently overtime compensation payments received by employees are includible in an individual's gross income and subject to federal income and employment taxes.

House bill (sec. 110102)

The House bill provision would allow certain individuals to claim an above-the-line deduction equal to qualified overtime compensation received during the tax year. Qualified overtime compensation is overtime compensation paid in excess of the regular rate of pay in compliance with section 7 of the FLSA Qualified overtime compensation does not include any qualified tips or amounts received by highly compensated employees. In order to take a deduction, the qualified overtime must be separately reported on Form W-2.

This provision of the bill would be effective for tax years 2025 through 2028.

Senate bill enacted as OBBBA (sec. 70202)

The Senate bill provision as enacted is similar to the House bill except that the maximum deduction allowed is $12,500 ($25,000 for joint filers) and it starts to phase out when the taxpayer's modified adjusted gross income exceeds $150,000 ($300,000 for joint filers). The Senate provision applies to tax years 2025 through 2028.

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KPMG observation

Similar to the tip provision, employers will need to separately report qualified overtime compensation, but there do not appear to be other changes required to Form W-2 reporting.

Excessive employee remuneration from controlled group

Section 162(m) limits the annual deduction for compensation paid to covered employees of a publicly held corporation to $1 million per employee. For any tax year, covered employees will include the principal executive officer (PEO), the principal financial officer (PFO), and the three highest paid executive officers, as well as anyone who had been a covered employee in a prior tax year beginning after December 31, 2016. Beginning in 2027, section 162(m) will expand to include the additional five highest paid employees for each tax year.

A publicly held corporation includes a corporation which issues securities required to be registered under section 12 of the Securities Exchange Act of 1934 (the Exchange Act) or any issuer that is required to file reports under section 15(d) of the Exchange Act.

Currently, section 162(m) does not include any entity aggregation rule explicit in the statue.

House bill (sec. 112019)

The House bill provision is identical to the Senate bill as enacted.

Senate bill enacted as OBBBA (sec. 70603)

The Senate bill provision as enacted adds an entity aggregation rule in section 162(m). The provision provides that remuneration paid to a specified covered employee by any member of the controlled group is aggregated to determine the loss of deduction for amounts over $1 million. The allowable deduction is allocated among the applicable controlled group members who are paying compensation to the specified covered employee. The controlled group determination uses the rules under section 414(b),(c), (m), and (o), which provide that related entities are treated as a single employer for many employee benefit purposes.

A specified covered employee includes the PEO, PFO, three highest paid executive officers, and prior covered employees of the publicly held corporation (as well as, for tax years beginning after 2026, the five highest paid employees taking into account all employees of the controlled group). When multiple members of the controlled group pay compensation to a specified covered employee that exceeds $1 million in the aggregate, the Senate bill provision proportionately allocates the $1 million deduction among each member of the controlled group that paid such remuneration to the employee.

The provision applies to tax years beginning after December 31, 2025.

KPMG observation

For an affiliated group of U.S. employers, this generally codifies the current final regulations that takes into account all members of the affiliated group in applying the deduction limitation and the clarification of the allocation method generally will have limited effects. For multinational organizations, however, these provisions could further limit the deduction available for the U.S. members of the group of related corporations, if all or a portion of the $1 million compensation deduction for compensation paid to a covered employee is being allocated to non-U.S. controlled group members.

Expanding application of tax on excess compensation for tax exempt organizations

Section 4960 imposes an excise tax equal to the corporate rate (currently 21%) on an applicable tax-exempt organization (ATEO) that pays excess remuneration and/or excess parachute payments to covered employees. An ATEO is generally defined to include organizations exempt from tax under section 501(c). A covered employee for this purpose means an individual who for any tax year starting in 2017 or later was one of the five highest compensated employees of the ATEO, taking into account compensation earned at related entities. Excess remuneration is compensation in excess of $1 million and excess parachute payments are severance payments that exceed certain thresholds.

House bill (sec. 112020)

The House bill provision would significantly expand the definition of "covered employee" under section 4960 to include *any* employee (or former employee) of the ATEO.

The provision would be effective for tax years beginning after 2025.

Senate bill enacted as OBBBA (sec. 70416)

The provision in the Senate bill as enacted is substantially similar to the House bill, except that the Senate bill clarifies the expansion applies to any employee or former employee who was an employee during a tax year after 2016.

KPMG observation

Under the Senate bill, the expansion of the covered employee definition under section 4960 to cover all employees expands the section 4960 excise tax well beyond the current top five compensated employees (including any employee who was ever a top five compensated employee in a prior year). For tax-exempt organizations with a number of employees earnings more than $1 million in annual compensation (other than for the provision of medical and veterinary services), such as large colleges and universities that have applied for and received treatment as a 501(c)(3) organization, this may have significant impacts. Additionally, the $1 million compensation threshold is not indexed for inflation, potentially expanding the future impact as more ATEO employees may be expected to earn over $1 million in annual compensation.

Unrelated business taxable income increased by amount of certain fringe benefit expenses for which deduction is disallowed

Unrelated business income tax (UBIT) applies to income derived from a trade or business carried on by a tax-exempt organization that is not substantially related to the performance of the organization's exempt functions.

Currently, taxable employers are subject to deduction limitations under section 274 for providing certain fringe benefits. Specifically, an employer cannot take a deduction for expenses related to qualified transportation fringes under section 132(f), such as qualified parking, transit passes, commuter highway vehicles, and qualified bicycle commuting reimbursement.

House bill (sec. 112024)

The bill provision would require the unrelated business taxable income (UBTI) of a tax-exempt organization to include amounts paid or incurred by the organization in providing qualified transportation fringe benefits (as defined in section 132(f)) and any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)) to the extent a deduction would not be allowed for such amounts if provided to employees by a taxable employer. This increase to UBTI would not apply to the extent the amounts paid or incurred are directly connected to an unrelated business.

Additionally, the new rule would not apply to churches, their integrated auxiliaries, conventions or associations of churches, religious orders, and educational organizations below the college level that are affiliated with a church or operated by a religious order.

These changes would apply to amounts paid or incurred after December 31, 2025.

Senate bill enacted as OBBBA

The Senate bill does not contain a similar provision. It is not part of the new law.

KPMG observation

TCJA had previously enacted a provision similar to the House bill, but it was later repealed retroactively. The determination of nondeductible expenses related to providing qualified transportation fringes could be a costly and time-consuming annual determination (see Notice 2018-99, related to the since-repealed similar proposal).

Extension and enhancement of paid Family and Medical Leave Act (FMLA) credit

Under TCJA, a temporary business credit under section 45S was enacted to provide eligible employers with a credit for providing paid FMLA leave. The credit can range from 12.5% to 25% of wages for paid leave of up to 12 weeks for a qualifying employee.

To qualify for the credit eligible employer must have a written policy that allows all full-time employees at least two weeks of annual FMLA leave and a pro-rata amount for all part-time employees. The policy must provide that not less than 50% of wages are paid during leave. A qualifying employee includes any employee employed for one or more years who had compensation not in excess of 60% of the compensation threshold for highly compensated employees. The 60% compensation limit for 2025 is $96,000.

The credit covers FMLA leave, but does not cover vacation, personal, or other medical or sick leave. Further, payments of paid leave made in compliance with applicable state or local government requirements are not taken into account in determining eligibility for the credit.

House bill (sec. 110106)

The House bill provision is identical to the Senate bill as enacted.

Senate bill enacted as OBBBA (sec. 70304)

The provision in the Senate bill as enacted makes the credit permanent. The credit is modified to allow it to be claimed for an applicable percentage of premiums paid or incurred by an employer for insurance policies that provide paid leave. An employer can elect between premiums paid or wages paid, but not both.

The provision includes an aggregation rule that treats employers within the same controlled group under rules in section 414(b) and (c) as a single employer. Therefore, all members of the controlled group must have a written paid FMLA policy that meets the requirements of the credit. The provision includes an exception for an employer that has a substantial and legitimate business reason for failing to provide a written policy. Legitimate reasons do not include the operation of a separate line of business, rate of wages or category of jobs, or State or local laws, but it may include the grouping of employees of a common law employer.

The provision provides that employer-provided paid leave required by state or local government will count toward paid leave provided by the employer for purposes of determining eligibility for the credit but will not be taken into account in determining the amount of credit.

Under the provision, an employer could elect to treat an employee as a qualifying employee after six months of employment (rather than one year). The provision also requires that an employee be customarily employed for at least 20 hours per week to be a qualifying employee.

The provision is effective for tax years beginning after December 31, 2025.

KPMG observation

The current requirements under section 45S have made it difficult for employers to meet eligibility requirements for the credit, while its temporary nature has made potentially eligible employers hesitant to establish a paid leave program that would be dependent on the tax credit. The current rules requiring paid leave for all employees with no threshold for part-time employees and disregarding paid leave required to be provided by state and local laws have impacted the use of the credit by employers since its enactment. Under the new law, employers may consider whether their current leave policies will make them eligible for the credit or whether adjusting their policies to become eligible for the credit in future tax years would be attractive.

Educational assistance programs: Income exclusion for employer payment of student loans made permanent; maximum annual exclusion adjusted for inflation

Section 127 excludes from income up to $5,250 per year of certain educational assistance provided by an employer under a qualifying educational assistance program. The TCJA expanded the definition of qualifying "educational assistance" to include employer payments made before January 1, 2026, of principal or interest on any qualified education loan incurred by the employee for education of the employee whether paid to the employee or to a lender (as extended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260).

House bill (sec. 110113)

The House bill provision is identical to the Senate bill as enacted.

Senate bill enacted as OBBBA (sec. 70412)

The provision in the Senate bill as enacted makes the exclusion for employer payments of qualified education loans permanent. In addition, the provision adjusts for inflation the maximum annual exclusion under section 127 for tax years beginning after 2026.

KPMG observation

Removal of the timing limitation for student loan payments permanently expands the scope of educational assistance that an employer may provide to employees and that employees may exclude from wages under an educational assistance program. Under the new law, employers that choose to provide this type of assistance after 2025 may need to amend their current written program and provide timely notice to eligible employees.

The maximum annual exclusion for employer provided educational assistance under section 127 has remained fixed at $5,250 since 1986. The change represents the first increase to this limit in almost 40 years as well as a shift from a fixed dollar amount to an inflation-adjusted figure.

Health savings accounts

House bill (secs. 110201 – 110213)

The bill includes a variety of provisions related to health savings accounts (HSA), including:

- Significantly increasing the potential contributions that may be made to an HSA (subject to phaseout based on income)
- Allowing HSA compatibility with Direct Primary Care arrangements (akin to subscription agreements for primary care services) and certain employer on-site medical benefits
- Allowing HSA compatibility for certain individuals enrolled only in Medicare Part A
- Allowing HSAs to reimburse payments for gym memberships and certain other fitness-related expenses
- Allowing both spouses to make catch-up contributions to the same HSA
- Allowing employee contributions when the employee’s spouse has a health FSA at the spouse’s employer
- Allowing remaining balances in health FSAs and HRAs to be rolled over to an HSA as part of a mid-year change in coverage to a high-deductible health plan (HDHP)

KPMG observation

The provisions are intended to expand the popularity of HSAs and employers not offering an HSA-compatible health plan (meaning a high-deductible health plan or HDHP) may receive requests from employees for the option. In particular, the proposed change allows an HSA to pay for the increasingly popular Direct Primary Care arrangements with general practitioners (akin to a subscription agreement for primary care services). In combination with the potential to use the HSA as a tax-free savings mechanism for retiree healthcare or other expenses, these changes could alter the attractiveness of HSAs.

Senate bill enacted as OBBBA

The Senate bill as enacted includes a few limited provisions related to health savings accounts (HSA), including:

- Permanent extension of safe harbor for absence of deductible for telehealth services
- Allowance of bronze and catastrophic plans in connection with health savings accounts
- Treatment of direct primary care service arrangements

Trump accounts

House bill (sec. 110115)

Initially called “MAGA accounts”, the House bill would provide these Trump accounts could be used as savings accounts for children. Contributions for these accounts would be for individuals under age 18. The annual contribution limit would be $5,000, except for contributions from the Federal government, state or local government, or certain tax-exempt entities.

Distributions could start at age 18 with only 50% of the account balance at age 18 eligible for distribution between age 18-25. Qualified distributions, which include distributions for higher education, post-secondary credentialing expenses, purchase of a principal residence, and payments for a small business loan, would be taxed at capital gains rates. Other distributions would be included in income and have an additional 10% if distributed through age 30. At age 31 the accounts are terminated and distributed.

Senate bill enacted as OBBBA (sec. 70204)

The Senate bill as enacted creates a new section 530A setting forth requirements and tax treatment related to “Trump accounts”. These new accounts are treated as individual retirement accounts (IRAs) as defined under section 408(a) which are not designated as Roth IRAs. Trump accounts would only be created for the exclusive benefit of eligible individuals (or their beneficiaries) who are under age 18 at the end of the calendar year. The account must be designated as a Trump account and there must be a written instrument meeting certain requirements, including that no contributions will be accepted before July 4, 2026 (12 months after enactment) and no distributions will be allowed until the calendar year in which the account beneficiary turns 18.

Individuals will be disallowed a deduction for contributions under section 219 that are made prior to the year in which the account beneficiary turns 18. The maximum contribution starting in 2026 will be $5,000, with the limit being indexed starting in 2028. Excess contributions will be subject to a 6% excise tax for each tax year they remain in a Trump account if not timely distributed under section 4973(b). Any distribution of amounts contributed in excess of the limit will not be included in gross income but the net income attributed to the excess will be increased by 100%. The account also may only be invested in “eligible investments” as defined by the statute and through implementing regulations.

Distributions generally could occur beginning in the calendar year in which the individual turns 18, other than qualified rollover contributions. Distributions will be taxed under section 72, but there is no investment in the contract for any qualified general contribution (made by a state or Indian tribal government or 501(c)(3) organization), a government contribution under section 6434 of the bill, or any contribution excluded from income pursuant to section 128. If an account beneficiary dies before the calendar year in which he or she turns age 18, the account will cease to be a Trump account and included in the gross income of the estate or beneficiary.

The trustee of a Trump account will have certain reporting requirements.

Employer contributions to Trump accounts

House bill

The House bill did not contain a provision for employer contributions to Trump accounts.

Senate bill enacted as OBBBA (sec. 70204)

The bill as enacted created a new section 128, allowing employer contributions to a Trump Account of an employee or the employee's dependents. The contribution would not be included in the employee's gross income if made pursuant to a program meeting certain requirements. The contribution with respect to any employee is limited to $2,500, with the limit being indexed starting in 2028. Employers will be required to have a separate written plan, and the program must be for the exclusive benefit of the employees and meet requirements similar to those in section 129 for dependent care assistance programs, including nondiscrimination, eligibility, notification, statement of expenses and benefits testing.

> **KPMG observation**
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> Certain aspects of the program remain to be set forth in future guidance, including whether the contribution limit is a one-time or annual limit, how the limit applies to an employee with multiple children, and whether the employer contribution may be instituted by salary reduction.

Trump account pilot program

House bill (sec. 110115)

The House bill would provide a one-time credit of $1,000 for each qualified child.

Senate bill enacted as OBBBA (sec. 70204)

The Senate bill as enacted created a new section 6434, which provides that U.S. citizens born in 2025 through 2028 are eligible for a $1,000 contribution to a Trump account. A new section 6659 provides for penalties in the event an election is made to participate in the pilot program with respect to an individual who is not an eligible child and the election was made due to negligence, disregard of the rules or regulations, or fraud.

The provisions regarding Trump accounts will apply to tax years beginning after December 31, 2025.

Elimination of qualified bicycle commuting reimbursement

Prior to 2018, the law excluded up to $20 a month in qualified bicycle commuting reimbursement from an employee's gross income. TCJA suspended the exclusion for 2018–2025 such that any reimbursement of this expense would be taxable. However, the taxable reimbursement is deductible.

House bill (sec. 110012)

The bill would permanently terminate the exclusion for qualified bicycle commuting reimbursement for tax years beginning after December 31, 2025.

Senate bill enacted as OBBBA (sec. 70112)

The Senate bill as enacted is similar to the House bill in that the bicycle reimbursement was permanently removed as a qualified transportation fringe benefit and is taxable to employees. However, the Senate bill also eliminated the employer deduction by removing the current exception under section 274(l).

KPMG observation

Given that bicycle commuting reimbursements have been considered taxable wages to employees since 2018, payroll and benefit systems would not need to be updated to reflect the change in treatment if either proposal is enacted into law. However, the Senate bill would make the taxable employee reimbursement nondeductible by the employer.

Elimination of exclusion for qualified moving expense reimbursements

Prior to the TCJA, qualified moving expense reimbursements were excludable from an employee's gross income and from the employee's wages for employment tax purposes. Such expenses included amounts received (directly or indirectly) from an employer as payment or reimbursement for expenses that would have been deductible as moving expenses if directly paid or incurred by the employee. Qualified moving expense reimbursements did not include amounts actually deducted by the individual. For members of the U.S. Armed Forces, moving and storage reimbursements and allowances for these expenses were excluded from gross income.

The TCJA suspended the exclusion from gross income and wages for qualified moving expense reimbursements for tax years 2018 through 2025. However, the exclusion was preserved for U.S. Armed Forces members on active duty who move pursuant to a military order and incident to a permanent change of station.

House bill (sec. 110013)

The House bill provision would make the TCJA modifications to the qualified moving expense reimbursement exclusion permanent. Thus, the provision would effectively repeal the qualified moving expense reimbursement exclusion for taxpayers who are not members of the U.S. Armed Forces.

The House bill proposal would be effective for tax years beginning after December 31, 2025.

Senate bill enacted as OBBBA (sec. 70113)

The Senate bill as enacted permanently repealed the moving expense reimbursement exclusion. Unlike the House bill, the Senate provision expanded the exception for members of the U.S. Armed Forces to also include members of the Intelligence Community.

KPMG observation

Given that the reimbursement or payment of qualified moving expenses by an employer have been considered taxable wages to employees since 2018, payroll and benefit systems generally do not need to be updated to reflect the change in treatment.

Exception added to section 274(o) deduction limitation for business meals

Section 274 provides guidance regarding the disallowance of certain entertainment, amusement, recreation, and meal expenses as business deductions. In general, for years after 2017, business meals are deductible at 50% of the expense, provided they are ordinary and necessary expenses incurred in the course of conducting business. A variety of exceptions to the 50% deduction limitation are provided in section 274(e). If one of the exceptions applies, the business can take a 100% deduction for the business meal expense. One of these exceptions, enumerated in section 274(e)(8), permits a 100% deduction for goods or services (including expenses for food and beverages) that are sold by the taxpayer in a bona fide transaction to customers for adequate and full consideration in money or money's worth. This exception has been routinely used by restaurants and catering firms to take a full deduction for staff meals provided during an employee's shift.

Effective in 2026 as enacted by the TCJA, section 274(o) provides that (1) meals at an employer-provided dining facility, (2) section 119 meal expenses for the convenience of the employer, and (3) the expenses for the related on-premises facilities, would be nondeductible. The language in section 274(o) does not explicitly provide for any exceptions from this rule of nondeducibility and the interaction between the deduction limitation in section 274(o) and the exceptions enumerated in section 274(e) has been somewhat unclear.

House bill (sec. 111006)

The House bill would provide an exception to the deduction limitation under section 274(o) for expenses described in section 274(e)(8) (relating to goods or services which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration). A business would be allowed a 100% deduction for meals that fall within the section 274(e)(8) definition, such as staff meals provided during an employee's shift by restaurants and catering firms.

Senate bill enacted as OBBBA (sec. 70305)

In addition to the deduction exception under section 274(e)(8), the Senate bill as enacted allows the deduction exception under section 274(n)(2)(C) for meals expenses for crews of certain commercial vessels, and meals provided on oil and gas platforms. The bill also expands the exception under section 274(n)(2)(C) to include meals for certain fishing boats and fish processing facilities.

KPMG observation

It has been unclear if section 274(o) would allow any exceptions, and a lack of exceptions could change a 100% deduction for restaurants and catering firms for their staff meals, as well as certain meals to employees on oil and gas platforms and certain commercial vessels, to no deduction for those expenses. Thus, these clarifications are beneficial to these industries. However, this could exacerbate the existing uncertainty regarding the interaction of other section 274(e) exceptions and the section 274(o) deduction disallowance.

Enhancement of dependent care assistance program

The maximum exclusion for dependent care assistance is $5,000. Section 129 allows employers to exclude from employee gross income amounts paid or incurred for employee dependent care provide through a dependent care assistance program.

House bill

The House bill did not contain a provision enhancing dependent care assistance programs

Senate bill enacted as OBBBA (sec. 70404)

The Senate bill increases the maximum exclusion to $7,500 after 2025.

Employer provided child care credit

Section 45F provides businesses a nonrefundable tax credit of up to $150,000 per year on up to 25 percent of qualified child care expenses provided to employees.

House bill (sec. 110105)

The House bill is identical to the Senate bill as enacted.

Senate bill enacted as OBBBA (70401)

The Senate bill as enacted permanently increased the credit and created a separate credit for qualified small business and indexes the credit amounts for inflation. The maximum credit will increase from $150,000 to $500,000 and the percentage of qualified child care expenses covered will increase from 25 percent to 40 percent. For small businesses the maximum credit is increased to $600,000 and the percent of qualified child care expenses covered is increased to 50 percent. An eligible small business is one that meets the gross receipts test of less than or equal to $25 million (adjusted for inflation) based on the five-year period preceding the tax year.

Employee retention tax credit (ERTC) enforcement provisions

The bill as originally passed by the House on May 22, 2025, included the proposal described below. However, the proposal was subsequently removed by H. Res. 492, a resolution passed by the House on June 11, 2025, directing the Clerk of the House to make engrossment corrections to the bill, which are then considered part of the engrossed bill sent to the Senate.

The Senate proposal resurrected the House proposal, but with substantial modifications as discussed below.

Current law

Under current law, an eligible employer was entitled to claim a refundable ERTC against applicable employment taxes for the second, third and fourth calendar quarters in 2020 and the first, second, third, and fourth quarters of 2021. If for any calendar quarter the amount of the credit claimed exceeds the employment taxes imposed on the eligible employer, the excess generally is treated as a refundable overpayment. An eligible employer may claim the ERTC on an original or amended employment tax return (Form 941 or 941-X). To claim a refund with respect to a quarter within tax year 2020, the claim was due by April 15, 2024; for tax year 2021, the claim was due by April 15, 2025. Under the American Rescue Plan Act, the statute of limitations for assessment of any amount attributable to an ERTC is extended from the normal three years to five years for calendar quarters beginning after June 30, 2021, and before January 1, 2022.

Since the ERTC was enacted, the IRS has received a significant number of ERTC claims, including claims of questionable merit. In light of the administrative burdens in processing these claims, the IRS has taken steps to guard against erroneous refunds being paid, including imposing a moratorium on the processing of ERTC claims and offering opportunities for voluntary withdrawal of certain claims. In the Tax Relief for American Families and Workers Act of 2024, the House passed legislation that would have imposed a deadline of January 31, 2024, to file any ERTC claims that had not been filed as of that date.

The Code imposes various penalties on tax return preparers and practitioners that assist taxpayers with filing returns, refund claims, and other documents related to tax liability with the IRS. Section 6701 imposes a penalty on any person who aids or assists in, or advises with respect to, the preparation or presentation of a return, affidavit, claim, or other document who knows that such filing would result in an understatement of the liability for tax of another person. The amount of the penalty under current section 6701 is $1,000, except in the case of a filing that relates to the tax liability of a corporation the penalty is $10,000.

Section 6695(g) provides that any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining head of household status or eligibility to claim certain individual credits shall pay a penalty of $500 for each such failure.

Section 6111 provides each material advisor with respect to any reportable transaction shall make a return (Form 8918) setting forth information identifying and describing the transaction, information describing any potential tax benefits expected to result from the transaction, and such other information as the Secretary may prescribe. For this purpose, a material advisor is any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and who directly or indirectly derives gross income in excess of a certain threshold amount for such aid, assistance, or advice. Section 6112 provides that each material advisor with respect to any reportable transaction shall maintain a list identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction, and containing such other information as the Secretary may by regulations require.

Section 6707(a) imposes a penalty on any person who is required to file Form 8918 with respect to any reportable transaction and who either fails to file such return on or before the due date or files false or incomplete information with the IRS with respect to such transaction. The penalty imposed under section 6707(a) with respect to any reporting failure is generally $50,000. In the case of a listed transaction, however, the penalty increases to the greater of $200,000, or 50% of the gross income derived by the material advisor (75% in the case of an intentional failure) with respect to the aid, assistance, or advice provided with respect to the listed transaction.

Section 6708 imposes a penalty on any person who is required to maintain a list under section 6112 and who fails to make such list available upon written request by the IRS within 20 business days after the date of such request. The penalty amount is equal to $10,000 for each day such failure continues after that 20th day.

House bill (sec. 112205)

Borrowing from the 2024 tax relief bill, the proposal would bar the IRS from issuing any ERTC refunds claimed after January 31, 2024. Specifically, the proposal would provide that no credit or refund of a COVID-related ERTC is allowed after the date of enactment, unless a claim for such refund or credit was filed on or before January 31, 2024. If a claim filed on or before January 31, 2024, was later amended to reduce an otherwise excessive claim, the proposal would provide the amended claim is considered to be part of the timely submitted original claim. The term "COVID-related ERTC" would mean any credit under section 3134 or any credit under section 2301 of the CARES Act.

The proposal would extend the assessment period for any tax attributable to a COVID-related ERTC to six years after the latest of: (1) the date on which the original return for the relevant calendar quarter is filed, (2) the date on which the return is treated as filed under section 6501(b)(2), or (3) the date on which the claim for credit or refund with respect to the COVID-related ERTC is made.

The proposal would also provide that the period for claiming a refund or credit attributable to a deduction for improperly claimed COVID-related ERTC wages does not expire until the assessment period for the related ERTC expires. This provision would permit taxpayers to claim a refund based on a deduction for wages that did not result in a COVID-related ERTC because the IRS disallowed the COVID-related ERTC.

The statute of limitations proposals would be effective for assessments made after the date of enactment.

In addition, the House proposal would add a concept of "COVID-ERTC promoter" to expand the scope of existing penalties. Under the proposal, a COVID-ERTC promoter would be defined to mean any person that provides aid, assistance, or advice with respect to any return, affidavit, claim or other document relating to an ERTC or to the eligibility for, or the calculation or determination of the amount of the credit, if the person meets certain materiality or gross receipts tests. Under the materiality test, a person would be treated as a COVID-ERTC promoter if the person charges or receives a fee based on the amount of the refund or credit if the aggregate gross receipts of such person for aid, assistance, and advice with respect to the person's tax year in which the person provided the assistance or the preceding tax year with respect to all COVID-ERTC documents exceeds 20% of such person's gross receipts for such tax year. The gross receipts test would be met if either (1) the aggregate gross receipts for the relevant year from such aid, assistance, and advice exceeds half of the person's gross receipts for the relevant year, or (2) both (i) the aggregate gross receipts for the relevant year from such aid exceeds 20% of the person's gross receipts for the relevant year and (ii) the person's aggregate gross receipts from such aid exceeds $500,000. The proposal would specifically exclude, however, any certified professional employment organization (CPEO) as defined in section 7705.

The proposal would increase the penalty under section 6701 to the greater of $200,000 ($10,000 in the case of a COVID-ERTC promoter that is a natural person) or 75% of the gross income of the COVID-ERTC promoter from providing aid, assistance, or advice with respect to a return or claim for COVID-ERTC refund or a related document. The expanded penalty under section 6701 would be retroactive and therefore would apply to actions taken since the ERTC was enacted.

The proposal would also provide that the knowledge element under section 6701(a)(3) is met if the COVID-ERTC promoter fails to meet certain due diligence requirements imposed by the Secretary. Under the proposal, those due diligence requirements must be similar to the due diligence requirements imposed by section 6695(g), except as otherwise provided by the Secretary. The proposal would also impose a separate penalty of $1,000 for failing to meet the ERTC due diligence requirements established by the Secretary and would treat that penalty in the same manner as an assessable penalty under section 6695(g). The proposal would treat, for the purposes of sections 6111, 6112, 6707, and 6708, any COVID-related ERTC as a listed transaction (and therefore a reportable transaction) with respect to any COVID-ERTC promoter that provides any aid, assistance, or advice with respect to any COVID-ERTC document relating to such COVID-related ERTC. The proposal would treat any COVID-ERTC promoter as a material advisor with respect to such transaction. Under the proposal, the term ''COVID–ERTC document'' would mean any return, affidavit, claim or other document related to any COVID-related ERTC, including any document related to eligibility for or the calculation or determination of any amount directly related to any COVID-related ERTC. The term "COVID-related ERTC" would mean any credit under section 3134 or any credit under section 2301 of the CARES Act.

The proposals described above would be generally effective as of date of enactment, except as follows:

- The proposed penalty changes would be generally effective for aid, assistance, or advice provided after March 12, 2020.
- The proposal regarding the due diligence requirements would be effective for aid, assistance, or advice provided after the date of enactment.
- The requirement to file a Form 8918 and maintain the information required by section 6112 would not apply until 90 days after the date of enactment.

Senate bill enacted as OBBBA (sec. 70611)

The Senate bill as enacted, similar to the House bill, bars certain refunds after the date of enactment and also makes amendments to the statute of limitations; however, the Senate bill is narrower than the House proposal. Under the Senate bill, the IRS is only barred from issuing a credit or refund of the credit under section 3134 after the date of enactment, unless a claim for such refund or credit was filed on or before January 31, 2024. Section 3134 applies to employment taxes for the third and fourth quarters of 2021. The House proposal would have applied to any credit under section 3134 as well as to any credit or advance payment under section 2301 of the CARES Act, which would cover 2020 employment taxes and the first and second quarters of 2021. The amendments to the statute of limitations under the Senate bill similarly only apply to taxes attributable to credits under section 3134, whereas the House proposal would have applied to any COVID-related ERTC.

The Senate bill substantially changed the House proposal regarding penalties. First, the Senate bill removed the proposed amendments to section 6701 regarding the penalty for providing aid, assistance, or advice with respect to a COVID-ERTC claim. The Senate bill also removed the proposed changes related to sections 6111, 6112, 6707, and 6708 regarding identifying COVID-ERTC claims as listed transactions and promoters of such claims as material advisors.

The Senate bill generally maintains the definition of a COVID-ERTC promoter as included in the House proposal, including the exclusion for any CPEO, but limits the definition of a COVID-ERTC document to pertain only to claims, returns, and other documents related to the credit under section 3134. The House definition of COVID-ERTC document would have applied to the credit under section 3134, as well as to the credit under section 2301 of the CARES Act. Although the Senate bill retained the due diligence requirements and associated $1,000 penalty for non-compliance, the Senate bill only applies to claims under section 3134.

The Senate bill amended section 6676 to extend that section to employment tax refund claims. This change to section 6676 was not included in the House proposal.

KPMG observation

The Senate bill significantly scaled back the enforcement effects of the House proposal by eliminating most penalties and disclosure requirements that are included in the House bill. The Senate bill also carves out ERTC claims made under section 2301 of the CARES Act, with the effect that ERTC claims related to 2020 employment taxes are not affected by the enforcement provisions in the Senate bill.

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